

REMARKS

This is responsive to the office action dated May 6, 2004 in the above-identified application. The claims stand rejected over Cane under 35 U.S.C. § 102, except for claim 4, which is rejected under 35 U.S.C. § 103 over Cane in view of Beeler. Based on the following explanation, as well as the amendments set forth above, applicants respectfully traverse the rejection.

In one exemplary embodiment, applicants' invention utilizes servers already in place for normal network functionality in order to diminish the need for additional and possibly slower communications during backup. More specifically, and with reference to FIG. 1 of the originally filed specification, a service provider provides an interface to a wide area network, e-mail, etc. As the communications go to and from the network, copies of selected items are kept in order to minimize the need for communications during backup operations. As explained in the specification at page 5 for example, this results in less traffic over relatively slow connection 112 when a backup must occur because data backup server 122 can derive much of the information it needs for the backup from other servers within local network 124 without having to communicate with the subscriber computer holding the data to be backed up.

Claims 1-3, 5-6, and 12-14 have been rejected under 35 U.S.C. § 102(e) as anticipated by Cane. Applicants respectfully traverse this rejection. The undersigned has received and reviewed the provisional application on which Cane is based. The disclosure is sparse and is drastically different from the published Cane application, cited against the present application. It is highly questionable as to whether the subject matter from Cane relied upon by the Examiner is even disclosed in the Cane provisional. Since applicant's provisional supports the claims at issue, Cane should not be considered prior art. However, applicants respectfully submit that since the claims as amended are clearly patentable over Cane, the present case is allowable. By the explanation of such differences below, applicants do not agree that Cane is prior art with

respect to the subject application, but are providing the following in the event the Examiner determines otherwise.

Turning to the merits of Cane, in the arrangement of Cane, a user requests that certain information be backed up. When other users request a backup of such information, the system recognizes the request as duplicative, and does not need to do a full backup for each user. Instead, a data table is created, which allows the backup data to be backed up on behalf of all users requesting such backup.

Claim 1 as amended now calls for the initial transmission of a data increment that was transmitted, without first executing a separate off-line backup operation, through the server to a remote destination. As data is transmitted from the subscriber to the remote destination, or from the remote destination to the subscriber, the provider server “eavesdrops” and maintains copies of certain data being transmitted through the provider server. Later, when backing up is desired, the backing up may be accomplished using the copy on the provider server if it is found and if it is the most recent version.

Cane does not disclose at least the limitation of backing up a data increment previously transmitted without a backup request through a provider server between a subscriber server and a remote destination. This limitation essentially provides that in the normal course of sending e-mails and accessing web pages, etc., data is maintained by the provider so that it may backup that data at a later time when requested to do so by the subscriber. Cane instead only backs up a subscriber’s data when it is specifically instructed to do so by that subscriber, and there is no provision for backing up data which is simply being fed through the provider server on its way to or from the subscriber. Accordingly, Cane requires a cumbersome sequence of requests for backing up, whereas Applicants’ invention provides that the normal information flow from and to the subscriber is transparently saved, selectively, for later backup purposes.

Based upon the foregoing, there are at least two limitations of Applicants' claim 1 missing from the Cane reference. Specifically, at least the limitation of backing up data that was previously transmitted "without a backup request" and the limitation of that data having been transmitted between "said subscriber server and a remote destination through a provider server" are missing from the Cane reference. For the foregoing reasons, claim 1 is believed to be patentable and the rejection should be withdrawn.

Claims 2-6 are believed patentable for at least the foregoing reasons. Additionally, claim 3 as presently amended indicates that certain data is monitored and copied if the data meets certain specified properties. This is disclosed in the originally submitted specification at, for example, page 11, last paragraph. Claim 12 is also believed to be patentable as it defines a provider and a subscriber each comprising plural servers that are connected by two different networks. No such system is suggested by Cane, or by Cane in any reasonable combination with any of the other references of record.

Additionally, claims 13 and 14 now include the additional limitation that the network connecting the provider servers has a higher speed or lower cost than the communications medium used to connect the subscriber network with the provider network. This is described in applicants' originally submitted specification at page 5, lines 2-8 for example.

Additionally, applicants have added claims 15 through 19. Claim 15 defines a system whereby there are two separate local area networks (LANs). One of the LANs includes the provider servers, and the other the subscriber servers. If the data can be backed up from the provider servers, such backup occurs, and if not, the data is backed up from the subscriber servers. Such a system is neither shown nor even remotely suggested by any of the prior art of record.

The remaining dependant claims define additional patentable features, such as a communications channel connecting the first and second LANs that has a lower bandwidth than that of the first LAN (claim 16), the use of data increments (claim 17), and several other remaining features believed to be relatively self explanatory. These claims, at least through their dependencies, are believed to define patentable subject matter.

The Examiner is authorized to deduct additional fees believed due from our Deposit Account No. 11-0223.

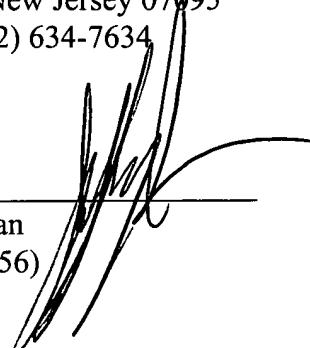
Respectfully submitted,

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#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail, in a postage prepaid envelope, addressed to Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on July 16, 2004.

Signed Ute H. Wojtkowski Print Name Ute H. Wojtkowski